

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION
COMMITTEE ON STATE ADMINISTRATION**

Call to Order: By **CHAIRMAN MACK COLE**, on February 4, 1999 at
10:00 A.M., in Room 331 Capitol.

ROLL CALL

Members Present:

Sen. Mack Cole, Chairman (R)
Sen. Don Hargrove, Vice Chairman (R)
Sen. Jon Tester (D)
Sen. Jack Wells, Acting Chairman (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Keri Burkhardt, Committee Secretary
David Niss, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 66, HB 194, HB 197, HB 198,
1/27/1999
Executive Action: None.

SEN. JACK WELLS was Acting Chairman.

HEARING ON HB 66

Sponsor: REP. JOHN COBB, HD 50, AUGUSTA

Proponents: Steve Pilcher, City of Billings

Opponents: None.

{Tape : 1; Side : A; Approx. Time Counter : 5 - 10}

Opening Statement by Sponsor:

REP. JOHN COBB, HD 50, Augusta, explained that this bill requires state agencies to include a turnaround time for licensing permits with exception to the Fish and Game, or if a license is issued the same day the application is received. Each state agency must provide, on the form issued by that agency, the estimated time it will take to process a complete application on an attachment or directly on the form. If the application is not complete it wouldn't have any effect. This bill lets people and the legislature know when these things are going to be done and if they're not done in a timely manner, the process can be analyzed to decide where the problem lies. This bill won't hurt anybody and doesn't cost anything.

Proponents' Testimony:

Steve Pilcher, City of Billings, explained that timing, planning, and predictability are important parts to a successful business in Montana. To have an estimate as to the time that will be required to adequately consider an act on a complete application, would be valuable to the regulative community. He said the key to success here is the term "complete application". He added, this bill is not here to ensure the granting of any approval of an application.

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 10 - 20}

SEN. MACK COLE asked why Fish, Wildlife, and Parks are exempt. **REP. COBB** answered that any time there is a Fish and Game bill, it winds up being a fight on the Floor. They also have applications for hunting, which are issued within a short time, and they have many people applying for them. **SEN. COLE** asked **REP. COBB** if he had any objections to this being amended to include everyone. **REP. COBB** answered that he did not. He asked that they leave in the restriction about applications processed within the same day. He added that they could even amend it to applications processed within five days. **SEN. COLE** asked **REP. COBB** when he is talking about permits, he is also talking about environmental assessments and EIS's. **REP. COBB** answered that he was correct.

SEN. JACK WELLS asked **REP. COBB** if he had an estimate of the number of applications that are effected by this. **REP. COBB** said that he doesn't have an accurate number but estimates between several hundred to several thousand. **SEN. WELLS** asked **REP. COBB** why there was not a cost involved. **REP. COBB** said that the

easiest way would be to use a stamp until they are ready to order new forms. Then, they would include a turnaround time on the bottom. This way the costs are minimal.

Closing by Sponsor:

REP. COBB closed.

HEARING ON HB 194

Sponsor: REP. JOHN COBB, HD 50, AUGUSTA

Proponents: Don Allen, Western Environmental Trade Association
Angela Fultz, Chief Deputy, Secretary of State

Opponents: None.

Opening Statement by Sponsor:

REP. JOHN COBB, HD 50, Augusta, said this is an act providing that an agency proposes by rule to increase, decrease, or adopt a monetary amount that persons are required to pay or will receive shall, if known, include in the proposal notice an estimate of the number of paying or receiving persons and the cumulative amount that those persons will pay or receive. Many times during the rule making, the agency just puts the amount being raised. He said it's good to see the total amount and the actual number of people being affected. Currently, if an agency is not going to have a hearing they have to include how many people are going to be affected. If they have a public hearing they do not have to include the number of people being affected. He added that this information is also good feed back to the legislature.

Proponents' Testimony:

Don Allen, Western Environmental Trade Association, stated that through working in agencies and with the legislative process, he thinks that this bill will help focus the agencies and help other people understand the monetary impact of some of the rules that are being proposed. He said that it would not be that difficult for the agencies to come up with an estimate of what the impacts would be in this regard. There needs to be a connection between what the agencies are doing, and the impact of that, and what the legislature needs to understand about the impact of the laws they pass in the next interim that are adopted into rule.

Angela Fultz, Chief Deputy, Secretary of State, said, as her agency is responsible for the administrative rules being published and distributed to legislators and interested individuals, they stand in support of this bill because it gives

people, they will offer more information. Many times people call asking what the rules are about and what there meaning is. This just gives another piece of information to individuals who have questions.

{Tape : 1; Side : A; Approx. Time Counter : 20 - 32}

Questions from Committee Members and Responses:

SEN. DON HARGROVE asked **REP. COBB** to clarify the number of persons affected. **REP. COBB** explained that if there is not going to be a public hearing, then on the last page of the rules, at the bottom, they usually put down the number of members affected. Persons can be defined as industries as well.

SEN. COLE asked **REP. COBB** how will people be notified if this bill goes through. **REP. COBB** said it would be on the rule notice at the bottom and it would be part of the information they already gave.

Closing by Sponsor:

REP. COBB closed.

HEARING ON HB 197

Sponsor: **REP. JOHN COBB, HD 50, AUGUSTA**

Proponents: **Don Allen, Western Environmental Trade Association
Riley Johnson, National Federation of Independent
Business**

Opponents: **None.**

Information: **Mark Cadwallader, Attorney, Department of Labor
and Industry**

Opening Statement by Sponsor:

REP. JOHN COBB, HD 50, Augusta, explained that this bill allows for the request of a rule making note on a bill that may be implemented by administrative rule. This bill has the same concept as a Fiscal Note. You can request a rulemaking note that would describe the subjects that must be addressed from the department: the number of people that might be affected, the short term and long term costs, and basically, what the department may actually do with the rules. Most importantly, it allows the department to come back and tell the legislature what

they can do more specifically. The rulemaking note can only be requested by the President of the Senate, the Speaker of the House, or the majority of the committee or members of the house in which the bill is to be considered. This bill gives immediate feedback to legislators on what rules need to be decided on. It allows a large group to ask the majority what the bill will actually do afterwards and for some specifics. This does not stop a bill from going through. Sometimes the legislator does not know what the rules are going to be and they let the departments work it out. However, this bill allows us to look at which rules need to be defined more specifically. It provides a check and balance system for the legislature to do a better job in providing rules.

Proponents' Testimony:

Don Allen, Western Environmental Trade Association, supports this bill. He pointed out that, "no comment or opinion relative to merits of the bill, except for matters and issues relating to rule making, may be included". He said this was important because the rulemaking note should be an objective analysis of what the bill does and what the rules should contain. Surveys have shown that only 47% percent of the rules actually comply with the law. When an agency prepares rules, they don't look like the law intended for them to look. This bill would connect what the legislative intent is and what the agency should be doing to carry out the law. This would help give some guidance.

Riley Johnson, National Federation of Independent Business, supports **HB 197**. He has worked for years during the interim period in drafting rules and regulations. It has constantly been a discouragement to watch agencies make laws. Many times bills are passed out without enough information and the agencies have to make rules. This would help point out exactly what the intentions were and where the problems lie.

Informational Testimony:

Mark Cadwallader, Attorney, Department of Labor and Industry, explained the rules the department made in response to a construction contractor registration program that was initially introduced in 1995. The Department adopted 3 rules in that case and one of them was a fee rule. The bill said that the Department shall set the fee by rule not to exceed an amount, therefore, they had to adopt a rule because the legislature directed them to do so. Many times the legislature tells them they must make rules and many times they are on projects they

have never looked at before. They will do their best to respond to a rulemaking note.

{Tape : 1; Side : A; Approx. Time Counter : 32 - 47}

Questions from Committee Members and Responses:

SEN. DON HARGROVE said that many times the Administrative Code Committee does what this bill is talking about. They review rules before they are published and they can even suspend the rule for a period of time. He asked how this relates to the Administrative Code Committee. **REP. COBB** said this would only do it while the legislature is in session, while the bill is going through. It will have no affect on the Administrative Code Committee and what their duties are. **SEN. HARGROVE** said that it might provide the Administrative Code Committee with another tool to use. They could look at what the code rulemaking note was and see how that is being accomplished. He asked how **REP. COBB** envisioned this working on the Floor. **REP. COBB** said that he believes the majority would have to vote, if a someone wanted to know what a bill does with the rule making. Then the Speaker of the House, or President of the Senate, or majority of the committee would request a note. It is always controlled by the majority so that every bill does not have a rulemaking note. **SEN. HARGROVE** asked if all three of these methods could be used separately. **REP. COBB** said that the sponsor, through the presiding officer, could. His concern is that only bills that will probably pass should have rulemaking notes, so the Department doesn't have to prepare one for every bill.

SEN. COLE asked **REP. COBB** if he saw this having a major effect in slowing down a bill. He also said he sees there is no cost, but he asked if there could end up being some cost. **REP. COBB** said that after the request it would go to the Department and they would have a time period of a few days to get it done. The cost would reflect the expense of paying the time cost. He tried to restrict it so that it would only be used for some major bills.

SEN. MACK COLE asked **Mr. Johnson** if this would only be done during the legislative session and where he would see this bill being beneficial at this time. **Mr. Johnson** said that it is beneficial because when bills go through, at first they may seem like a good idea, but as time goes on with all this rule making authority, it may become clear that the rules are not understood for their intent. By going to the Department and getting some idea of the scope and depth of the rules that they are going to have to get into, then the legislature can ask itself if they really want this or if they can spell out in statute a better way

to give the Department direction. Once the bills pass and the legislature is gone, the departments do the best they can. Time and time again, the Departments ask what the legislature meant. They will get two or three ideas, settle on it, and they write the rules.

SEN. JACK WELLS said that the note could be requested at the time of 2nd reading and asked **REP. COBB** if he meant that this would be treated somewhat like an amendment. He asked if they would have the note prepared or if it would be requested, which would pass that bill for the day to give the agency time to prepare the note. **REP. COBB** said that it was necessary to do it at 2nd reading because the majority is there and they are all voting. It might postpone the bill, if there were enough controversy, to wait until the note is done. They may still pass it and let it go to the other side while the note is prepared. It would be done before it got to 3rd reading. A motion would be made to have a rule making note and then it would be voted on.

{Tape : 1; Side : B; Approx. Time Counter : 47 - 56; Comments : Tape over at 47.}

Closing by Sponsor:

REP. COBB closed.

HEARING ON HB 198

Sponsor: **REP. JOHN COBB, HD 50, AUGUSTA**

Proponents: **Don Allen, Western Environmental Trade Association**
Riley Johnson, National Federation of Independent Business
Dean Randash, Owner, NAPA Auto Parts

Opponents: **None.**

Opening Statement by Sponsor:

REP. JOHN COBB, HD 50, Augusta, explained this bill would allow an economic impact statement on a rule proposal upon the request of 15 legislators. Currently, we have the Administrative Code Committee and the Revenue Oversight Committee that can ask for an economic impact statement. The economic impact statement is in existing law already, but it has not been used very much. Other states have economic impact statements done regularly. This bill would let 15 legislators beside the Administrative Code Committee and the Revenue Oversight Committee to request an economic impact

statement. An economic impact statement cannot be used to stop emergency rules or where there is already a requirement for an economic impact statement. The economic income statement describes the costs, how things can be done differently, and who it effects. If **SB 11** passes there will not be a code committee anymore. If the bill doesn't pass we should still allow other legislators the opportunity to ask for an economic impact statement. The largest criticism he heard on the Floor was that 15 legislators were not enough and that there should be a majority of 30 legislators or more. He argued, it would only be used for a tough issue, not on every bill. The economic income statement does not stop the rules from being implemented but it does have an effect of having up to 3 months to complete and return to the committee. The committee can accept it, reject it, or write their own. He explained, even if the 15 legislators ask for an economic income statement, the statement doesn't go to them, it goes to the Administrative Code Committee and they would make the determination if the statement was satisfactory or not. They would probably hold up making rules for those 3 months, but they wouldn't have to.

Proponents' Testimony:

Don Allen, Western Environmental Trade Association, explained that the importance of the economic effects needs to be emphasized more and that this bill does that. It offers another way for it to be focused on, as far as economic impacts. Many times the economic impacts are forgotten and we wind up with more expensive rules and laws than what we should. It provides a better way to focus and connect both the legislative process and the rule making process.

Riley Johnson, National Federation of Independent Business, explained that economic impact statements need to be brought out on occasion for major crisis type bills that are going to effect many people. He suggested that the committee bring forth some form of economic impact statement that could be addressed during the legislature on bills themselves. In 1998, they surveyed their members and asked if an economic impact statement be should be required for legislation that carries a potential financial impact on a private sector. He explained that 75% percent of the people said yes, 17% percent said no, and 8% percent were undecided. The proponents, from that survey said "good government policy results when private sector costs are known regarding the implementation of legislation. An economic impact statement would allow these private sector entities and law makers to debate true costs of proposed laws and regulations on tax payers and the economy. To rely solely on the private sector to bring costs to the attention of law makers often results in a

precede self interest by special interest lobbyists. A non partisan objective view, provided by the Legislative Fiscal Division or other department, which would develop the economic impact statement would better serve the legislators and the private sector." He added that he encourages their support with this bill and that it would be used for the big tax bills, not every single bill.

Dean Randash, Owner, NAPA Auto Parts, supports this bill but says that it isn't enough. The fiscal and social impact some legislation has on our society are tremendous. He explained how he is currently dealing with two examples. He offered up some ideas on how the legislation that caused his problems could have been written. He said that he encourages the committee to go farther than what this bill offers.

{Tape : 1; Side : B; Approx. Time Counter : 56 - 78}

Questions from Committee Members and Responses:

SEN. HARGROVE said that the last line on the Fiscal Note says extensive economic impact statements could significantly increase costs but the costs are indeterminable. He said that the intent is good but asked what keeps this from being very large and very intrusive on people? He asked if **REP. COBB** sees a parallel between the economic impact statement and environmental impact statement. **REP. COBB** said that he doesn't think it's that broad. Environmental impact statements are huge and this bill doesn't apply to them. This is only for the rules, not for the bill itself, and would state the significant increase in costs and the code committee already does this. He doesn't think that it will be that extensive. Currently, the Department still comes back to the Administrative Code Committee to ask them if the rules are sufficient. He added that the committee will control how big this will ever get. The committee controls what is sufficient or not. If the committee says that its not sufficient, the Department doesn't have to do anymore. **SEN. HARGROVE** asked how he envisioned this working. **REP. COBB** said that legislators would have to write to the Department themselves or ask the code committee to do it and then the process would start.

SEN. COLE said that he understands that the code committee can do everything this bill asks for now. He asked if, by having the 15 members in there, this would give another opportunity to ask for economic rules. **REP. COBB** answered that he was correct. **SEN. COLE** said that it is good to realize that we still want to have the code committee left in there when we get done. He added that we need to take a look at that. **REP. COBB** said that the question that needs to be decided is whether you want to have some type of

economic impact statements that the other committees can request. If all those other committees can now request it then why do we even need this bill. On the other hand, if your just going to have the code committee by itself, this is just another option for them. Minority would prefer to have an economic impact statement, this would allow the minority to have a say so, while it still allows the majority to decide what is sufficient or not.

Closing by Sponsor:

REP. COBB closed.

SEN. WELLS excused himself as Acting Chairman and **CHAIRMAN COLE** took charge of the committee.

Discussion on SB 228

Joe Kerwin, Deputy of Election, Secretary of State, handed out EXHIBIT(sts28a01), a list of members of the working group for **SB 228**. He explained that the group came up with a number of ideas to give them more flexibility as to when they hold the election. They were able to come to a consensus that a May election date would work, if they were given the option to have a tax election in November. He handed out summary of what the working group had decided on or had concerns with **EXHIBIT(sts28a02)**. He read through the summary. He suggested that the working group meet again and the committee members attend. He said that mail ballots were not discussed much during the working group.

{Tape : 2; Side : A; Approx. Time Counter : 78 - 108; Comments : Change tape at 78.}

Lengthy discussion was directed toward the concerns of the working group. They talked about this bill being bigger than it needs to be. Their objective should be to put the CI-75 required tax elections into a primary or general election. They talked about using the previous year's property valuations. The committee talked about moving the June date to May and how that would effect various entities. The working group never decided on an ideal date to hold a tax election. The working group liked the idea of having a couple of options. The committee felt that the voters did not intend to have one tax election per government entity per year, held on a primary date or a general election date. The option of having tax elections on a primary date or general election date would make two opportunities for tax elections per year but the committee decided that the voters expect one tax election per year. The committee decided that they needed to find out the voters' intent of CI-75, in order to

decide whether to allow one tax election per year or to allow two tax elections per year but one per government entity. They discussed this issue further.

ADJOURNMENT

Adjournment: 11:47 A.M.

SEN. MACK COLE, Chairman

KERI BURKHARDT, Secretary

MC/KB

EXHIBIT (sts28aad)